

Ravipati Harischandra Prasad Vs Manda Surya Kantham and Others

Court: Andhra Pradesh High Court

Date of Decision: Oct. 14, 2004

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 1 Rule 10, Order 1 Rule 10(2), Order 1 Rule 3

Citation: (2005) 2 CivCC 820 : (2005) 2 RCR(Civil) 805

Hon'ble Judges: Gopala Krishna Tamada, J; Bilal Nazki, J

Bench: Division Bench

Advocate: M.V. Durga Prasad, for the Appellant; M. Krishna Mohan Rao and Mr. N. Vijay, for the Respondent

Judgement

Bilal Nazki, J.

It appears that three suits are pending between the parties being O.S. Nos. 220 of 2001, 8 of 2002 and 10 of 2003. In

these suits, applications came to be filed by the defendant for addition of two more defendants, which were rejected by the trial Court and

dismissed. Three revision petitions have been filed against the orders passed by the trial Court being CRP No. 4261 of 2002, CRP No. 4344 of

2003 and CRP No. 4751 of 2003. CRP No. 4261 of 2003 has been allowed by a learned single Judge of this Court on 11.8.2003, whereas the

present revision petitions came up for hearing before another learned single Judge of this Court who disagreed with the order in CRP No. 4261 of

2002 and made a reference. The learned single Judge held.

Hence, both the revision petitions may be referred to an appropriate Division Bench to decide the question, "whether the applications for

impleadment of parties in these matters are to be allowed in the light of the common defence of fraud raised in the respective written statements

and especially in the light of the view expressed by another learned single Judge in yet another CRP No. 4261 of 2002.

2. It appears that the learned single Judge did not differ with the earlier order of the learned single Judge on merits, but on the principle whether a

defendant could seek impleadment of another defendant in the suit because the learned single Judge stated,

On the ground that common defence alleging fraud had been taken in such suits, especially in view of the principle that the petitioner is dominus litis

such applications cannot be allowed. I am of the prima facie opinion that merely because some defence had been taken and a ground is put forth

under this common defence, the parties who need not be impleaded as parties need not be brought on record.

3. So what we understood from the order of reference basically is that we have to decide the question whether at the instance of a defendant

another party can be added as a party in a suit. Order 1, Rule 10(2) of C.P.C. lays down,

The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the

Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any

person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable

the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

4. On perusal of this provision it is clear that the Court can, at any stage of the proceedings with or without application of either party, add or

delete a party from the proceedings. But the contention raised is that the plaintiff is the master of the suit and he has to choose his defendants and if

he seeks remedies against the defendants, he will add them as defendants, but if there is no remedy chosen by him against a particular person,

another defendant cannot force the plaintiff to add a defendant. This argument is attractive, but cannot be accepted because this question, in our

view, is not res integra. There are various judgments on which reliance has been placed. In *Union of India and another Vs. Deoki Nandan*

Aggarwal, the Supreme Court laid down (Para 14),

It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is

plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The

power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it, which are not there.

Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the

deficiency. Courts shall decide what the law is and not what it should be.

5. In *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, the Supreme Court held,

It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application

in circumstances conceivably within the contemplation of the statute.

6. In *Mohammad Ali Khan v. Commissioner of Wealth-tax*, AIR 1997 SC 1165 the Supreme Court held in para-6,

It is a cardinal principle of construction that the words of a statute are first understood in their natural, ordinary or popular sense and phrases and

sentences are construed according to their grammatical meaning unless that leads to some absurdity or unless there is something in the context or in

the object of the statute to suggest the contrary. It has been often held that the intention of the Legislature is primarily to be gathered from the

language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a

construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be

avoided. Obviously the aforesaid rule of construction is subject to exceptions. Just as it is not permissible to add words or to fill in a gap or lacuna,

similarly it is of universal application that effort should be made to give meaning to each and every word used by the Legislature. In *The J.K.*

Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, it was observed by this Court (Para 7 of AIR):-

The Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of statute

should have effect.

7. The question directly came before the Supreme Court in *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and*

Others, In paras 5 and 6 it held-

5. It was argued that the Court cannot direct addition of parties against the wishes of the plaintiff who cannot be compelled to proceed against a

person against whom he does not claim any relief. Plaintiff is no doubt dominus litis and is not bound to sue every possible adverse claimant in the

same suit. He may choose to implead only those persons as defendants against whom he wishes to proceed though under Order 1 Rule 3, to avoid

multiplicity of suits and needless expenses. All persons against whom the right to relief is alleged to exist may be joined as defendants. However,

the Court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he

had any cause of action against him. Rule 10 specifically provides that it is open to the Court to add at any stage of the suit a necessary or a person

whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the

questions involved in the suit.

6. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the

plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touch-stone of Order 1 Rule 10

which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively A

proper party is one in whose absence an effective order can be made, but whose presence is necessary for a complete and final decision on the

question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court, but of a judicial discretion

which has to be exercised in view of all the facts and circumstances of a particular case.

8. Similarly in *Gurmauj Saran Baluja Vs. Mrs. Joyce C. Salim and Others*, when an argument was made before the Delhi High Court that the

plaintiff had a right to choose the defendants and no defendant could be foisted upon the plaintiff without his consent so as to broaden the scope of

his suit, the Court rejected the argument holding that the right of the plaintiff to choose his defendants was circumscribed by the provisions of Rule

10 of Order 1 of CPC. His right to choose his defendants was not absolute. The Court made a reference to the statement of law as to the practice

prevalent in England as contained in para 226, Vol.37, Halsbury's Laws of England, Fourth Edition, which reads as under :-

226. Intervention by persons who are not parties. - The general rule of practice is that the plaintiff is entitled to choose the person or persons as

defendants against whom he wishes to pursue his claim for the relief or remedy he seeks, and that he cannot be compelled to proceed against other

persons whom he has no desire to sue. Nevertheless, the Court has power to add a person who is not a party to the action as originally constituted

as a defendant against the will of the plaintiff, either on the application of the defendant or of the non-party. An application by any person to be

added as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or

matter or the question or issue to be determined as between him and any party to the cause or matter.

A person having no legal but only a commercial interest in the outcome of the litigation between the plaintiff and the original defendant cannot be

added as a party either for the convenience of the Court or otherwise. On the other hand, a person may be added as a defendant, either on his

own application or the application of the defendant, where his proprietary or pecuniary rights are or may be directly affected by the proceedings

either legally or financially by any order which may be made in the action, or where the intervener may be rendered liable to satisfy any judgment

either directly or indirectly.

9. Similarly in a judgment reported in *Khaja Abdul Khader Vs. Mahabub Saheb and Others*, a Division Bench of this Court, while analyzing the

provisions of Order 1, Rule 10 CPC held-

The expression "'settle all the questions involved in the suit'" used in Order 1, Rule 10(2) C.R.C. is susceptible of a liberal and wide interpretation so

as to take in the final adjudication of all the questions pertaining to the subject matter thereof. Such wide interpretation warranted by the language

employed by Order 1, Rule 10(2) C.P.C would certainly enable the Court to avoid conflicting decisions on the same questions and, at the same

time, finally and effectually put an end to litigation respecting them. The trainers of this rule must be held to have intended that all the material

questions common to the parties to the suit and to the third parties should be tried once and for all and the Court is invested to secure the aforesaid

result with an ample judicious discretion to add parties which are necessary or proper in this regard. The narrow interpretation of settlement of all

the questions involved in the suit between the parties alone would amount to adding something into this provision which was not specially

introduced by the sovereign Parliament. If the narrow view sought to be placed upon this provision was intended by the legislature, nothing would

have prevented them from using the words "between the parties". The crucial test for the addition or otherwise of a particular party as defendant or

plaintiff is whether the presence of such party is necessary or atleast proper without Whom there can be no effective and final adjudication of all

issues involved in the suit with regard to the same subject matter. The intendment and object of the provision as could be gathered from the

language used therein appears to us is to adopt a liberal construction to enable the Court to determine all the questions relating to the subject

matter of the suit arising not only between the parties to the suit but once and for all in the presence of all those parties whose presence is

necessary or proper for an effective and final adjudication.

10. The law has been succinctly laid down by a Division Bench of the Allahabad High Court in a judgment reported in Lakshmi Narain Vs. The

District Judge, Fatehpur and others, . It stated that the addition of parties under the rule is not the question of initial jurisdiction of the Court but of

judicial, discretion to be exercised on judicial considerations, considering the facts and circumstances of a particular case. The discretion conferred

on the Court is with a view to deal with every case of defect of parties. The Court exercising discretion under this rule may implead an additional

defendant at the instance of one of the defendants even though the impleadment is seriously contested by the plaintiff. The discretion vested with

the Court, though wide is, however, circumscribed by limitations which are built-in the provisions contained in Order 1, Rule 10(2) itself. The

Court has been empowered to add a party to a suit in two situations, namely when a party ought to have been joined when the suit was originally

instituted and was not so joined, or secondly, the presence of the person sought to be added is necessary to effectively and completely adjudicate

upon and settle all points involved in the suit. It is for the effective adjudication of the real controversy between, the parties that the Court should

alone exercise its discretion vested in it. The discretion of the Court is to be exercised sparingly and in exceptional cases, for the plaintiff is dominus

litis and in the normal course one cannot be impleaded as additional party if a plaintiff does not want. In a case where the Court directs addition of

a party against the will of the plaintiff who is to control the litigation, the Court must be satisfied that there is anything in the suit which cannot be

determined on account of absence of party in the party-array, or whether any prejudice would be caused by that party not being added. To put it

differently, where a person is neither necessary nor proper party, the Court has no jurisdiction to add him as a party. The question of necessary

party is to be determined with reference to the averments in the plaint and the material put up for decision before the Court. The object of the rule

is to promote the cause of justice and to bring before the Court at the same time all the persons who are parties to the dispute relating to the

subject-matter, thereby avoiding inconvenience and separate trials. Thus, where the relief sought in the suit in question was one of declarations that

the plaintiff was the owner of the house in suit and for cancellation of the sale deed executed by the defendant in respect of a portion of that house,

it was held that if it was found that the plaintiff was the sole owner of the house, he shall be entitled to the relief, otherwise, the suit would be

dismissed. The suit was being not one for partition where presence of all the shareholders may be warranted. Therefore, there was no necessity to

implead all the heirs of the alleged co-sharers who had not come forward to claim any share in the house in suit.

11. On the other hand, the respondents have referred to the judgments reported in Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru, U.P

Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., M/s. Aliji Monoji and Co. Vs. Lalji Mavji and others, Savitri

Devi Vs. District Judge, Gorakhpur and Others, and Vijay Pratap and others Vs. Sambhu Saran Sinha, These judgments pertain not to the

principle as to whether a party can be added at the instance of defendant, but on the question whether a particular party has to be added or not

and who is a proper and necessary party.

12. Three independent suits have been filed. In all these suits applications came to be filed by the defendant for addition of parties as defendants.

These applications were dismissed. An application in one of the suits, on revision, has been allowed by a learned single Judge of this Court. The

Court has exercised discretion which it had power to do. That order is not subject matter of appeal before us and in this reference, we are afraid,

we cannot go into the merits of that order as on the question of principle we agree that a party can be added as defendant even at the instance of

the defendant Whether in two applications in other two suits which have been dismissed by the trial Court the parties could be added or not is a

matter which has to be considered in the factual matrix of those cases and that can be done by the learned single Judge as well. Since the plea of

fraud has been taken in all the three suits and the parties who are sought to be added are alleged to have played a role in committing the fraud, that

fact will have to be taken into consideration as has been taken into consideration by the learned single Judge while deciding the earlier revision.

13. With these observations, we answer the reference and direct that the revision petition be placed before the learned single Judge for disposal.